

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY

In the Matter of:

Frank J. Mirabella, Jr.

A Former Officer,  
Director and Institution-  
Affiliated Party of:

Southwest Savings and Loan  
Association,  
Phoenix, Arizona

Re: OTS Order No. SF-94-044

Date: December 30, 1994

ORDER OF PROHIBITION

RE: FRANK J. MIRABELLA

WHEREAS, the Office of Thrift Supervision ("OTS") and FRANK J. MIRABELLA, JR. ("MIRABELLA") have entered into a Stipulation and Consent to Entry of An Order of Prohibition with respect to MIRABELLA; and

WHEREAS, MIRABELLA, by his execution of the Stipulation, has, without admitting or denying any of the allegations set referenced therein, consented and agreed to the issuance of this Order of Prohibition by the OTS, pursuant to Section 407(g) of the National Housing Act ("NHA"), 12 U.S.C. § 1730(g), and Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e).

NOW, THEREFORE, IT IS ORDERED that:

1. MIRABELLA shall not hold any office in, or participate in any manner in the conduct of the affairs of any Federally regulated depository institution or the other entities that are described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of OTS (acting through its Director or an authorized representative thereof) and the "appropriate Federal financial institutions regulatory agency" for the Federally regulated depository institution which is involved. Due to the operation of Section 8(e)(6) of the FDIA, 12 U.S.C. § 1818(e)(6), conduct prohibited by this Order, without said prior written approval of the OTS and of the appropriate Federal banking agency, also includes, without limitation: (1) the soliciting, procuring, transferring, attempting to transfer, voting, or the attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in Section 8(e)(7)(A) of the FDIA, 12 U.S.C. § 1818(e)(7)(A); and (2) voting for a director, or serving as an institution-affiliated party. The foregoing shall not limit in any way the performance by MIRABELLA of services as a stock broker, provided, however, that such services on behalf of an insured institution do not involve the exercise of discretion in connection with or control over the assets of an insured institution or the making of loan underwriting decisions or participation in the conduct of the affairs of an insured institution or make him an institution affiliated party within the meaning of 12 U.S.C. § 1813(u).

2. The Stipulation is made part hereof and is incorporated herein by reference.

3. MIRABELLA shall, at OTS's request, on reasonable notice and without service of a subpoena, provide discovery and testify truthfully at any deposition and at any administrative or judicial proceeding brought by OTS and, if requested, provide sworn statements in connection with any formal examination or investigation initiated by the OTS that relates in any way to the affairs of Southwest and any continuing litigation or proceeding brought by OTS as a result of its investigation relating to Southwest and/or any of its institution-affiliated parties.

4. This Order is subject to the provisions of Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), and shall become effective on the date it is issued, as shown in the caption above.

By:

  
\_\_\_\_\_  
OFFICE OF THRIFT SUPERVISION

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION  
DEPARTMENT OF THE TREASURY

In the Matter of:

Frank J. Mirabella, Jr.

A Former Officer,  
Director and Institution-  
Affiliated Party of:

Southwest Savings and Loan  
Association,  
Phoenix, Arizona

Re: OTS Order No. SF-94-044

Date: December 30, 1994

STIPULATION AND CONSENT TO  
ENTRY OF AN ORDER OF PROHIBITION

RE: FRANK J. MIRABELLA, JR.

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed FRANK J. MIRABELLA, JR.

("MIRABELLA"), a former President, Chief Executive Officer, Chief Operating Officer, Executive Vice President, Treasurer and Chief Financial Officer and Member of the Board of Southwest Savings and Loan Association, Phoenix, Arizona, ("Southwest" or "the Association"), and former officer and director of Southwest Savings Investment Corporation ("SWSIC") and Southwest Savings Esplanade Investment Corporation ("SWSEIC"), wholly owned subsidiaries of Southwest, that the OTS is of the opinion that grounds exist to initiate an administrative proceeding against MIRABELLA to prohibit the further participation of MIRABELLA in

the conduct of the affairs of any insured depository institution, pursuant to Section 407(g) of the National Housing Act ("NHA"), 12 U.S.C. § 1730(g), and Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(e);

WHEREAS, the OTS has concluded that MIRABELLA, in his capacity as an officer and director of Southwest and/or an officer and director of SWSIC and/or SWSEIC, participated in, aided or abetted and/or took action to cause or bring about various loans and transactions entered into by Southwest referenced in Resolution Trust Corporation v. Dean, et al., Nos. Civ. 91-2026 PHX-EHC and 93-0304 PHX-RCB in the United States District Court for the District of Arizona, which loans and transactions resulted in breaches of fiduciary duties, unsafe and unsound practices and violations of applicable regulations, caused financial loss or other damage to Southwest, and exhibited a willful and/or continuing disregard for the safety and soundness of Southwest; and

WHEREAS, MIRABELLA desires to cooperate with the OTS to avoid the time and expense of such administrative litigation and, without admitting or denying that such grounds exist or the conclusions of OTS, and without any adjudication of fact or law having taken place, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) The Association is a "savings association" within the meaning of Section 2(4) of the Home Owners' Loan Act, 12

U.S.C. § 1462(4), and Section 3(b) of the FDIA, 12 U.S.C. § 1813(b). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).

(b) MIRABELLA, as former President, Chief Executive Officer, Chief Operating Officer, Executive Vice President, Treasurer and Chief Financial Officer and Member of the Board of Southwest, and former officer and director of SWSIC and SWSEIC, wholly owned subsidiaries of Southwest, participated in the conduct of the affairs and was an institution affiliated party with respect to Southwest within the meaning of 12 U.S.C. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association and/or persons who participated in the conduct of the association's affairs. Therefore, MIRABELLA is subject to the authority of the OTS to initiate and maintain a prohibition proceeding against him, pursuant to Section 407(g) of the NHA, 12 U.S.C. § 1730(g), and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e).

2. Consent. MIRABELLA consents to the issuance by the OTS of the accompanying Order of Prohibition ("Order"). He further agrees to comply with its terms upon issuance and stipulates that the Order complies with all requirements of law.

3. Finality. The Order is issued by the OTS under the authority of Section 407(g) of the NHA, 12 U.S.C. § 1730(g), and Section 8(e) of the FDIA, 12 U.S.C. § 1818(e). Upon issuance by the Regional Director or his designee for the Western Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

4. Waivers. MIRABELLA waives the following:

(a) the right to be formally served with a written notice of the OTS's charges against him;

(b) the right to an administrative hearing of the OTS's charges against him;

(c) the right to seek judicial review of the Order, including, without limitation, any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and

(d) any and all claims for the award of fees, costs, or expenses related to this OTS enforcement matter, any monetary release previously granted by the OTS, and/or Order, whether arising under common law or under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(e) With respect to Paragraph 3 of the Order, however, it is understood that MIRABELLA does not waive his privilege against self-incrimination under the Fifth Amendment to the United States Constitution. If MIRABELLA invokes his privilege against self-incrimination under the Fifth Amendment to the

United States Constitution with respect to any matter about which the OTS may inquire or the production of any document requested by the OTS and OTS obtains a grant of immunity pursuant to 18 U.S.C. § 6001 et seq., MIRABELLA will, consistent with any such grant of immunity, provide discovery and testify truthfully at any deposition and at any judicial or administrative proceeding on the matters for which immunity is given. It is further understood that the costs, if any, of providing information pursuant to Paragraph 3 of the Order shall be handled as set forth in 12 C.F.R. § 512.7(d) (1994).

5. Other Government Actions Not Affected. MIRABELLA acknowledges and agrees that his consent to the entry of the Order are for the purposes of resolving this prohibition action only, and does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of MIRABELLA that may be or have been brought by the Resolution Trust Corporation or any other government entity other than the OTS.

6. Acknowledgement of Criminal Sanctions. MIRABELLA acknowledges that Section 8(j) of the FDIA, 12 U.S.C. § 1818(j), sets forth criminal penalties for knowing violations of the Order.

WHEREFORE, MIRABELLA executes this Stipulation and Consent to Entry of an Order of Prohibition, intending to be legally bound hereby.



By:

Frank J. Mirabella, Jr.  
FRANK J. MIRABELLA, JR.

Accepted by:

John F. Blum  
OFFICE OF THRIFT SUPERVISION

Dated:

12-20-94

Dated:

12/27/94

GRANT, WILLIAMS & LAKE, P.C.  
Suite 2150 - Northwest Tower  
3300 North Central Avenue  
Phoenix, Arizona 85012

By:

Merwin D. Grant  
Merwin D. Grant, Esq.  
Counsel for Frank J. Mirabella

Dated:

Dec 19, 1994